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DOCKET FILE COPY ORIGINAL

May 17, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Enlarge Issues Against Davis."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 

John W. Hunter

By: 

Stephen T. Yelverton

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAY 17 1993

In re Applications of:

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FEDERAL COMMUNICATIONS COMMISSION

MOTION TO ENLARGE ISSUES AGAINST DAVIS

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against Shellee F. Davis ("Davis"). This motion is based on information in the application of Davis and other pre-designation matters and thus is timely filed within thirty (30) days of the release of the hearing designation order on April 15, 1993. See, DA 93-423. In support of its motion to enlarge the issues, ORA submits the following comments.

Section 73.316 Violation

The application of Davis, as filed on December 31, 1991, proposes the use of a directional antenna. See, attachment 1. Section 73.316 (c) of the Rules requires that all FM applications proposing the use of a directional antenna must include certain information or data. See also, FCC Form 301, Section V-B, page 3, Question 10. Section 73.316 (c)(1) requires a complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. This sub-section specifically states that it is not sufficient to label the proposed antenna with a generic term and that a specific model number must be provided. In the case of custom designed antennas, a full description of the antenna design must be submitted.

Davis flagrantly violates this specific and unambiguous requirement. In her application, at Statement A, she references the antenna manufacturer (Shively) on another page, but fails to give a model number, and states that an antenna of another make might be used. Davis then cavalierly states that she will provide the required information after the antenna is installed and when an application for license is filed.

Davis' failure to comply with the requirements of Section 73.316 requires the specification of a hearing issue. Sub-section (c)(1) requests information essential for the Commission staff to properly analyze and process a directional antenna application. This is critical data. The staff must know what type and model of antenna will be used in order to determine whether the applicant's proposed directional pattern will correspond with that specific antenna's predicted output and performance.

Accordingly, the Presiding Judge is requested to specify the following

is short-spaced, a hearing issue must be specified as to that applicant's basic qualifications. Jemez Mountain Broadcasters, 7 FCC Rcd 4219, 4220, paras. 2 and 12 (1992); Pavne Communications, Inc., 1 FCC Rcd 1052, 1053, paras. 6, 9-10 (Rev.

6 FCC Rcd 5356, 5360, para. 27 (1991). Sections 73.213 and 73.215 do not in any way eviscerate the spacing requirements of Section 73.207, or the necessity to show the unavailability of fully-spaced sites. Both of these provisions specifically state that a public interest showing must be made in order to obtain a grant.

Accordingly, the Presiding Judge is requested to specify the following issue:

To determine whether the application of Shellee F. Davis proposes a tower site in violation of Section 73.207 of the Commission's Rules, and if so whether the use of a directional antenna pursuant to Section 73.213 or 73.215 of the Rules would be in the public interest and whether she is basically qualified to be a Commission licensee, and thus whether her application should be granted?

If the issue is specified, ORA requests the production of all documents indicating the efforts of Davis to locate a fully-spaced tower site.

Ex Parte Issue

Davis admitted in an opposition to a petition to deny her application, filed April 8, 1992, that prior to filing her application in December 1991 she contacted the Commission staff as to the merits of her short-spaced tower proposal and the use of a directional antenna. Section 1.1208 (b)(1) prohibits such contact if the applicant intends to file a mutually exclusive application which would cause the proceeding to become restricted. Accord, MM Docket No. 86-225, 2 FCC Rcd 3011, 3023, para. 88 (1987). It is readily apparent that at the time Davis knew that she would be filing a mutually exclusive application which would become part of a restricted proceeding.

The date for amendments of right in this proceeding was March 9, 1992. Davis filed an amendment which was initially date stamped March 10, 1992. After ORA raised this matter in a petition to deny, filed March 26, 1992, the Commission staff changed the stamp date to March 9, 1992. This was at the behest of Davis and could not have been the result of a mere status inquiry. Such a contact as to a contested matter in a proceeding with mutually exclusive applications violates Section 1.1208 (b)(1).

The hearing designation order, DA 93-423, at para. 12, and n. 8, appears to rule on these ex parte matters. However, ORA never requested denial of Davis' application or specification of an issue on this basis. Rather, in a pleading, filed May 6, 1992, at p. 1, ORA stated that it would request the specification of an issue at the appropriate time. Thus, it is filing this request for specification of an ex parte issue in order to protect and to perfect

Statement A
PROPOSED DIRECTIONAL ANTENNA

Attachment 1

prepared for
Shellee F. Davis
Westerville, Ohio

Ch 280A (103.9 MHz) 6.0 KW-DA (H&V) 100 m

Figure 2 is a directional antenna horizontal plane envelope pattern which shows the permissible radiation from the proposed facility along all azimuths. This is a composite envelope, within which both the horizontally and vertically polarized radiation patterns will be contained. Upon grant of this application, an antenna will be designed to match this pattern as closely as possible without exceeding the pattern limits shown herein.

The proposed envelope pattern does not change by more than 2 dB per 10 degrees of azimuth. The ratio of maximum to minimum radiation is 3.01 dB, well below the 15 dB limit contained in Section 73.316 of the FCC Rules. Shellee F. Davis is proposing use of an

Statement A (con't)

Table 1 presents a tabulation of the horizontal plane pattern envelope, including minima and maxima. Table 2 supplies radial heights above average terrain, effective radiated power in pertinent directions based on this pattern, and the resultant contour distance data for this proposal. Table 2 supplements the information provided in response to elevation/contour distance table of Page 5 of Section V-B of FCC Form 301.

The tabulation of Figure 1 includes radials at 5° increments at certain azimuths; these are to be considered "special radials" and are included in the pattern computations used to determine the location of the coverage contours, and hence the shape of the coverage "footprint". Section 73.316(c)(3) requires radiation values at least every 10 degrees, which has been adhered to in this proposal.

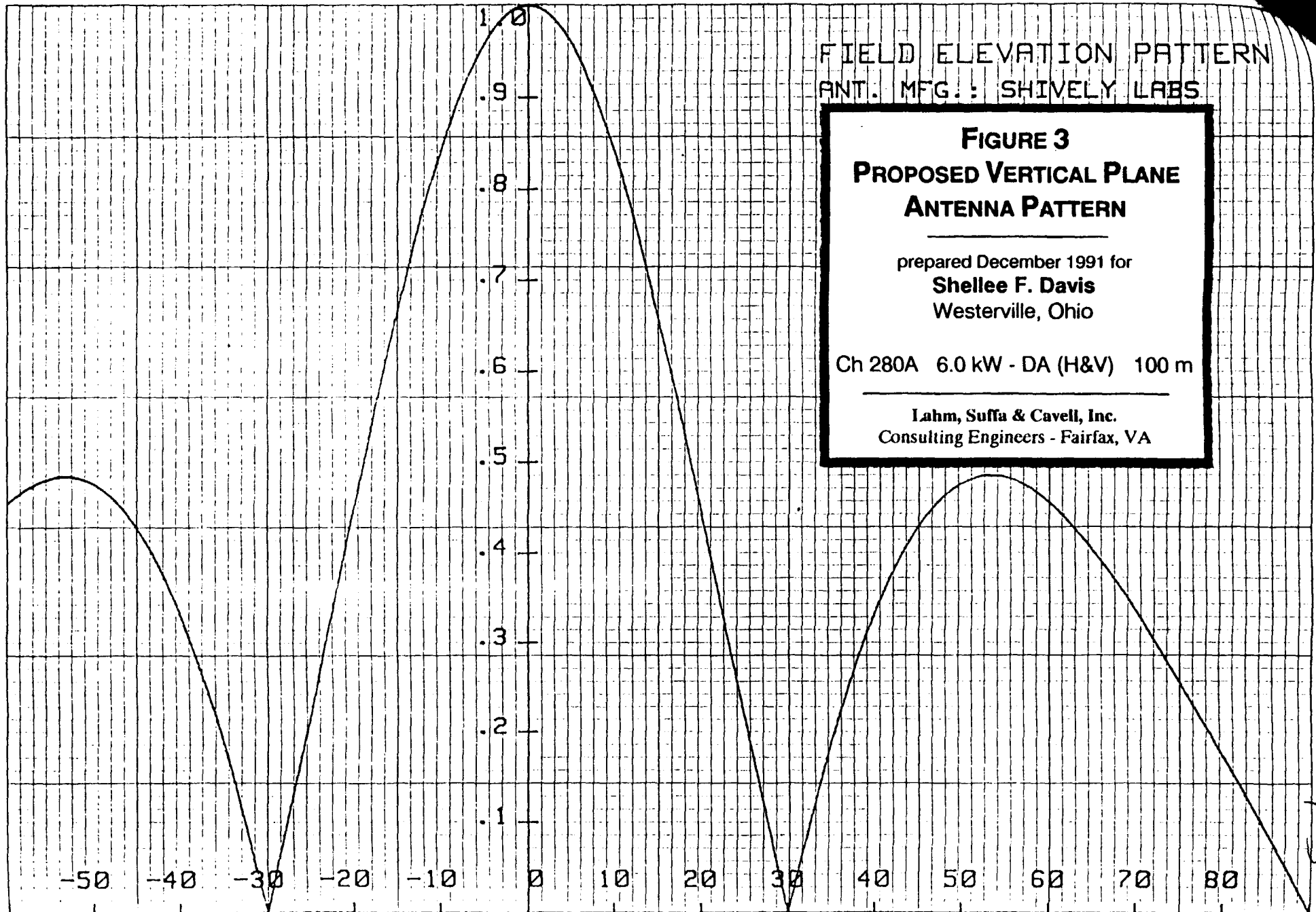
FIELD ELEVATION PATTERN
ANT. MFG.: SHIVELY LABS

FIGURE 3
PROPOSED VERTICAL PLANE
ANTENNA PATTERN

prepared December 1991 for
Shellee F. Davis
Westerville, Ohio

Ch 280A 6.0 kW - DA (H&V) 100 m

Lahm, Suffa & Cavell, Inc.
Consulting Engineers - Fairfax, VA



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directional antenna proposed?

☒ Yes ☐ No

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 17th day of May, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Motion to Enlarge Issues Against Davis" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
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2000 L Street, N.W.
Washington, D.C. 20554

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Federal Communications Commission
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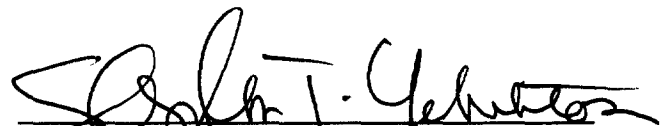
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